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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/348,954	07/07/1999	JOHN A GENT	C-309	6008

7590

03/08/2004

C/O BRISTOL MYERS SQUIBB COMPANY  
100 HEADQUARTERS PARK DRIVE  
SKILLMAN, NJ 08558

EXAMINER
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ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

17

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/348,954

Applicant(s)

GENT ET AL.

Examiner

C. Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11, 12, 14-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 10 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 16-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leise, Jr. (5,401,264) in view of Gent (5,860,959).

Leise discloses all aspects of the claimed invention with the exception of a malodour counteractant that is released. Leise discloses an ostomy pouch 10, as shown in figure 1, including an envelope 12, 13 defining a waste collection chamber and having an opening 15. The envelope 12, 13 further comprises a carrier including an absorbent pad 21 that comprises a malodor counteractant in the form of an odor absorber, as described in column 3, lines 23-26. The carrier is fixedly attached to the interior surface of the envelope 12, 13, as shown in figure 2. The carrier is encased against the interior surface by a cover 25, which is capable of allowing liquid to pass through opening 30, and therefore is liquid permeable. The carrier is unvented directly to the exterior of the pouch, as shown in figure 1. The cover 25 prevents contact of the carrier with the stoma, as shown in figure 1.

Gent teaches the use of a malodor counteractant fragrance that is released into an ostomy bag in addition to an odor absorber, as disclosed in column 2, lines 26-31. The addition of a fragrance masks odors that are not absorbed by the odor absorber.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the ostomy bag of Leise with the malodor counteractant of Gent, to mask odors that are not absorbed.

With respect to claims 2-8, Gent discloses the malodor counteractant fragrance is coated onto the surface of a carrier by means of adhesive, the carrier comprising a matrix that is hygroscopic and comprises glycerol, which acts as a surfactant or soap, as described in column 4, lines 5-20.

With respect to claim 16, Gent discloses a fragrance additive.

With respect to claim 17, the claim discloses a product by process limitation. The claim is drawn to an article of manufacture, and therefore the patentability of the claim does not depend on its method of production.

With respect to claim 19, the malodor counteractant reduces odors of excreted bodily fluid.

Claims 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leise, Jr. (5,401,264) in view of Gent (5,860,959), and further in view of Mayhan et al. (4,863,445).

Leise, as modified by Gent, discloses all aspects of the claimed invention with the exception of an oxidizing agent generator.

Mayhan discloses an anti-microbial agent for use in ostomy bags (see column 3, lines 47-57), where the anti-microbial agent is a hydrogen peroxide generator (see column 4, lines 25-26).

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It would have been obvious to one of ordinary skill in the art at the time of invention to have the carrier of Leise further comprise an oxidizing agent generator, as taught by Mayhan, to provide an inhibitory effect on microbes present in the collected body fluids in order to prevent infection (see Mayhan, column 1).

With respect to claims 14 and 15, Mayhan discloses in column 4, line 29, the hydrogen peroxide generator is sodium perborate.

### ***Allowable Subject Matter***

Claims 10 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
cla

March 2, 2004

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
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